

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	CASE NO. 16 – 71479 – JRS
	:	
QUENTIN ALEXANDER STEPHENS,	:	
	:	CHAPTER 11
	:	
DEBTOR.	:	

**UNITED STATES TRUSTEE’S MOTION TO DISMISS
OR CONVERT TO CHAPTER 7**

COMES NOW, Nancy J. Gargula, the United States Trustee for Region 21, in furtherance of her administrative responsibilities imposed pursuant to 28 U.S.C. § 586(a) and 11 U.S.C. § 1112(b), and files this Motion to Dismiss or Convert to Chapter 7 and in support thereof states as follows:

1. The Court has jurisdiction of this matter under 28 U.S.C. § 1334(a) and (b), 28 U.S.C. § 157(a) and (b)(1). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (B).
2. Pursuant to 28 U.S.C. § 586(a)(3) and (8), the United States Trustee’s duties include supervising the administration of chapter 11 cases. The United States Trustee files this motion in furtherance of its duties and responsibilities pursuant to 28 U.S.C. § 586 and 11 U.S.C. § 307.
3. On December 2, 2016, Quentin Alexander Stephens, (the “Debtor”) filed a voluntary petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* On June 1, 2017, pursuant to Debtor’s voluntary request, the Court entered an order

converting the case to one under chapter 11. Since that time, Debtor has continued in possession of his assets pursuant to 11 U.S.C. §§ 1107 and 1108.

4. It does not appear, given Debtor's operations over the course of the bankruptcy thus far, that Debtor will have cash flow sufficient to support a chapter 11 plan.

5. The United States Trustee believes that Debtor has no ability to develop and confirm a viable plan of reorganization. The United States Trustee contends that based upon the circumstances in this case, that inability to propose a confirmable plan, constitutes cause for dismissal or conversion under §1112(b)(4)(A).

6. 11 U.S.C. § 1112(b), in pertinent part, provides as follows:

... [T]he court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

(4) For purposes of this subsection, the term "cause" includes –

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation

11 U.S.C. § 1112(b)(4)(A)

7. Notwithstanding the fact that Debtor has been in chapter 11 for 29 months, Debtor has failed to even propose a plan of reorganization, and based upon the operating reports filed in this case, it appears unlikely Debtor will be in a position to confirm any proposed plan. As a matter of "fundamental bankruptcy policy," failure or inability to obtain confirmation of a plan of reorganization or liquidation, within a reasonable period of time, constitutes cause for dismissal or conversion of a chapter 11 case under 11

U.S.C. § 1112(b). *In re DCNC North Carolina I, LLC*, 407 B.R. 651, 665 (Bankr. E.D. Pa. 2009). *Accord In re American Capital Equipment, Inc.*, 405 B.R. 415, 426-27 (Bankr. W.D. Pa. 2009) (citing 7 COLLIER ON BANKRUPTCY, ¶ 1112.04[5][b] at 1112-38 (2008)).

8. The United States Trustee contends that Debtor is not in a position to confirm any potential plan of reorganization, and that as a result sufficient grounds exist for dismissal or conversion

9. Debtor has been under the protection of the Court as a debtor-in-possession for approximately 29 months. During that time Debtor has been unable to propose a plan of reorganization. The delay suggests that Debtor should not continue under chapter 11. Accordingly, the Court should dismiss or convert this case for cause under 11 U.S.C. § 1112 of the Bankruptcy Code.

WHEREFORE, the United States Trustee prays for the entry of an order dismissing or converting this case and for such other relief as the court deems necessary and appropriate.

Respectfully submitted,

NANCY J. GARGULA
UNITED STATES TRUSTEE
REGION 21

/s/ David S. Weidenbaum
DAVID S. WEIDENBAUM
Georgia Bar No. 745892

Office of the United States Trustee
362 Richard B. Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303
404.331.4437
david.s.weidenbaum@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss or Convert was this day sent by first class mail to the following:

Quentin Alexander Stephens
3294 Kylee Dawn Circle
Lawrenceville, GA 30045

This is to certify that I have on this day electronically filed the foregoing *Motion to Dismiss or Convert* using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

Patti H. Bass on behalf of Creditor CAVALRY SPV I, LLC
ecf@bass-associates.com

Brian K. Jordan on behalf of Creditor U.S. Bank National Association
ecfganb@aldridgepite.com, bjordan@ecf.inforuptcy.com

Maria C. Joyner on behalf of Trustee Nancy J. Whaley
ECF@njwtrustee.com, ECF@njwtrustee.com

Bryce R. Noel on behalf of Creditor Ocwen Loan Servicing, LLC
ecfganb@aldridgepite.com, bnoel@ecf.inforuptcy.com

Elizabeth H. Parrott on behalf of Creditor USAA Federal Savings Bank
lizp2@w-legal.com, ADVNotices@w-legal.com

Joshua M. Ryden on behalf of Creditor Ocwen Loan Servicing, LLC,
ecfganb@aldridgepite.com

Howard P. Slomka on behalf of Debtor Quentin Alexander Stephens
se@myatlallaw.com,

myecfcalendar@gmail.com;myatllaw@gmail.com;info@myatllaw.com;notices@nextchapterbk.com;SlomkaTR74878@notify.bestcase.com

This the 22nd day of November, 2019.

/s/ David S. Weidenbaum
DAVID S. WEIDENBAUM

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

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**NOTICE OF HEARING ON UNITED STATES TRUSTEE'S
MOTION TO DISMISS OR CONVERT CASE**

PLEASE TAKE NOTICE that the United States Trustee has filed a motion to dismiss or convert the above-referenced case.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the United States Trustee's Motion to Dismiss in **Courtroom 1404**, United States Courthouse, 75 Ted Turner Drive, Atlanta, Georgia, at **2:00 p.m.** on the **17th day of December, 2019**.

Your rights may be affected by the court's ruling on this motion. You should read this motion carefully and discuss it with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in this motion or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the motion with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how, and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is: Clerk, U.S Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, SW, Atlanta, GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

Respectfully submitted,
NANCY J. GARGULA
UNITED STATES TRUSTEE
REGION 21

/s/ David S. Weidenbaum
DAVID S. WEIDENBAUM
Georgia Bar No. 745892
Trial Attorney

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